

PLM-II

DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

*for name*

9610

FILE: B-192882

DATE: April 2, 1979

MATTER OF: Philip L. Marlowe

*[Denial of Waiver For Debt By Former Service Member]*

DIGEST: Former service member seeking waiver under 10 U.S.C. 2774 for a debt due to the service's failure to deduct monthly allotments totalling \$120 from his pay should have reasonably expected his net paychecks after establishment of the allotments not to exceed those received in the month preceding establishment of the allotments. When his subsequent net pays were in fact considerably greater and involved substantial fluctuations in amount, he should have been alerted to probable error in his pay account. Also, he received earnings statements during the period which should have alerted him to the error. Therefore, he is considered partially at fault, precluding waiver.

AGC00025  
This action is in response to a letter, with enclosures, from James A. Lewis, Esq., on behalf of Mr. Philip L. Marlowe concerning his debt to the United States, which arose from erroneous payments of pay and allowances he received incident to his service in the United States Air Force during the period of March through December 1973. That letter, in effect, constitutes an appeal of the determination made in a letter dated March 20, 1978, from our Claims Division which denied waiver of his debt.

The waiver denial was based on a finding of partial fault on Mr. Marlowe's part in that having authorized monthly allotments totalling \$120 in March 1973, he should have expected a decrease in his net pay thereafter. It was determined that when the decrease did not occur, the existence of possible error was easily discernable from the monthly earnings statements he received and his failure to examine these statements and take steps to have the error corrected, constituted at least partial fault on his part.

In support of his appeal, there was enclosed an affidavit, dated August 15, 1978, executed by Mr. Marlowe. That affidavit stated that while he was a member of the Air Force (February 1970 to February 1974), he became aware of potential overpayment problems from others; that on March 1, 1973, he made a \$50 allotment to the Merchants National Bank in Terre Haute, Indiana; that at approximately the same time he began receiving \$85 a month as a basic

~~504759~~

B-192882

allowance for quarters (BAQ) and \$55 a month for separate rations; that he never noticed any significant increase or decrease in his paychecks during this time with the exception of \$2 - \$4 variations which he learned to expect; and that he believed that the allotments which were being taken out were being compensated for by the BAQ and separate rations pay.

The law governing waiver of claims of the United States arising out of erroneous payments of pay and allowances made to or on behalf of a member of a uniformed service is contained in 10 U.S.C. 2774 (1976). That provision authorizes the Comptroller General to waive such claim if "the collection \* \* \* would be against equity and good conscience and not in the best interest of the United States." However, subsection 2774 (b)(1) prohibits the exercise of that authority if there is "an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member \* \* \*."

We interpret the word "fault" as used in 10 U.S.C. 2774(b)(1) as including something more than a proven overt act or omission. Thus, fault is considered to exist if in light of all known facts it is determined that the individual should have known that an error existed and taken action to have it corrected. The standard we employ is to determine whether a reasonable person should have been aware that he was receiving payments in excess of his proper entitlements. B-184783, May 12, 1976. In this regard, we have taken the position that substantial and inexplicable changes in pay, or the lack of such changes when they would ordinarily be expected, constitute sufficient notice to alert a reasonable person that an error may have been made. B-182776, January 17, 1975.

An examination of Mr. Marlow's pay account for the period of February through December 1973, shows that payments actually disbursed to him were generally on an increasing trend. That account is as follows:

		Monthly gross pay	Mid & End of month payments
February	1973	\$397.48	\$128.71 126.32
March	1973	586.27	225.12 211.45

B-192882

cont.		Monthly gross pay	Mid & End of month payments
April	1973	469.20	160.35 160.35
May	1973	469.20	300.35 176.51
June	1973	470.85	195.35 197.00
July	1973	470.40	195.35 196.55
August	1973	470.40	195.95 195.95
September	1973	470.40	195.95 195.95
October	1973	495.90	205.28 205.28
November	1973	599.26	205.38 308.64
December	1973	584.10	246.08 252.68

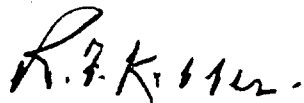
We believe that a number of factual statements made by Mr. Marlowe in his affidavit are not consistent with the facts as shown by his pay record. First, the only period during which his midmonth and end of month paychecks reflected no more than a \$2 - \$4 variation was the period June-September 1973. Between February and June his paychecks fluctuated as much as \$140 more than his preceding paycheck on one occasion and \$99 on another. Second, while he did begin to receive separate rations of approximately \$50 a month beginning in March, he did not receive a quarters allowance until November 1973. Third, since he authorized allotments totalling \$120 in March 1973, and his monthly

B-192882

gross pay was only increased approximately \$50 for separate rations, thereafter, he should have expected that his net pays in any month would not be greater than those received for the preceding month. In this regard, it is noted that his February net pays were \$128.71 and \$126.32. Every paycheck which he received thereafter was not less than \$30 more than either of his February 1973 paychecks, and the overwhelming majority were for considerably more.

It appears to us that Mr. Marlowe, at a minimum, should have known at least by his midmonth paycheck in April (\$160.35) that his pay account was in disarray. Further, since during the period in question he received leave and earnings statements, he had the means by which he could have readily ascertained why his midmonth and end of month paychecks for March through June 1973 were well in excess of the amounts they should have been. It appears that he should have been particularly alert to the possibility of error since he states in his affidavit that "he came to have fear of overpayment[s] since other military personnel constantly worried about this problem and discussed it."

Based on the foregoing, it is our view that Mr. Marlowe is at least partially at fault in the matter, which statutorily precludes waiver. 10 U.S.C. 2774(b)(1). Accordingly, the action taken by our Claims Division denying waiver in Mr. Marlowe's case, is sustained.

  
Deputy Comptroller General  
of the United States